

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBIN ANBAR, an individual,
Plaintiff,
vs.

CASE NO. 13cv1318-WQH-RBB
ORDER

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE;
ONEWEST BANK, FSB; INDYMAC
MORTGAGE SERVICES;
MERIDIAN FORECLOSURE
SERVICE F/K/A MTDS, INC., A
CALIFORNIA CORPORATION DBA
MERIDIAN TRUST DEED
SERVICE; AND DOES 1 THROUGH
50, INCLUSIVE.

Defendants.

HAYES, Judge:

The matter before the Court is the Emergency Ex-Parte Application for Issuance of a Temporary Restraining Order, and Order to Show Cause Why a Preliminary Injunction Should Not Issue. (ECF No. 10).

I. Background

On June 6, 2013, Plaintiff, represented by counsel, filed a Complaint in this Court. (ECF No. 1). Plaintiff alleges that she is the owner of real property located at 1819 Autumn Place, Encinitas, California, which is encumbered by a Mortgage Note with an outstanding balance of approximately \$557,750. The Complaint alleges that “Plaintiff does not dispute that money is owed on the mortgage obligation,” but “Plaintiff disputes the amount owed, and seeks the Court’s assistance in determining who the holder in due course is of the Note and Deed of Trust.” *Id.* ¶ 30. The Complaint alleges the following

1 claims for relief: (1) Declaratory Relief; (2) Quasi Contract; (3) Negligence; (4) Violation
2 of 15 U.S.C. §1692, *et seq.*; (5) Violation of California Business and Professions Code
3 Section 17200, *et seq.*; (6) Accounting; (7) Cancellation of Instruments; and (8) Quiet
4 Title.

5 On July 16, 2013, Plaintiff filed an Emergency Ex-Parte Application for Issuance
6 of a Temporary Restraining Order, and Order to Show Cause Why a Preliminary
7 Injunction Should Not Issue (“July 16, 2013 Application for Temporary Restraining
8 Order”). (ECF No. 4). On July 17, 2013, the Court denied the July 16, 2013 Application
9 for Temporary Restraining Order because there had been no showing that the Summons
10 and Complaint had been served upon any Defendant, and Plaintiff failed to demonstrate
11 that the Court had personal jurisdiction over any Defendant. (ECF No. 6).

12 On July 18, 2013 and July 19, 2013, Plaintiff filed proofs of service, indicating that
13 the Defendants were served with the Summons and Complaint on July 17, 2013 and July
14 18, 2013. (ECF Nos. 7, 8, 9, 11).

15 On July 19, 2013, Plaintiff filed a second Emergency Ex-Parte Application for
16 Issuance of a Temporary Restraining Order, and Order to Show Cause Why a Preliminary
17 Injunction Should Not Issue (“July 19, 2013 Application for Temporary Restraining
18 Order”). (ECF No. 10). In the July 19, 2013 Application for Temporary Restraining
19 Order, Plaintiff seeks an injunction “preventing defendants ... from continuing with their
20 nonjudicial foreclosure, and/or conducting a Trustee’s Sale of the Subject Property
21 presently scheduled for July 23, 2013.” *Id.* at 2.

22 **II. Discussion**

23 When the nonmovant has received notice, as here, the standard for issuing a
24 temporary restraining order is the same as that for issuing a preliminary injunction. *See*
25 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).
26 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not
27 be granted unless the movant, by a *clear showing*, carries the burden of persuasion.”
28 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotation omitted). The party seeking

1 preliminary injunctive relief has the burden to show “that he is likely to succeed on the
2 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
3 the balance of equities tips in his favor, and that an injunction is in the public interest.”
4 *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

5 The sole legal basis for the July 19, 2013 Application for Temporary Restraining
6 Order is California Civil Code § 2923.6(c) and California Civil Code § 2924.12(a). (ECF
7 No. 10-1 at 11-14). Section 2923.6(c) provides: “If a borrower submits a complete
8 application for a first lien loan modification offered by, or through, the borrower’s
9 mortgage servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized
10 agent shall not record a notice of default or notice of sale, or conduct a trustee’s sale,
11 while the complete first lien loan modification application is pending.” Cal. Civ. Code
12 § 2923.6(c). Section 2924.12(a) provides: “a borrower may bring an action for injunctive
13 relief to enjoin a material violation of Section ... 2923.6....” Cal. Civ. Code §
14 2924.12(a)(1).

15 The Complaint contains no claim arising under—or reference to—California Civil
16 Code § 2923.6(c) or § 2924.12(a). The Complaint does not allege that Plaintiff
17 “submit[ted] a complete application for a first lien loan modification offered by, or
18 through, [Plaintiff]’s mortgage servicer,” or that “the complete first lien loan modification
19 application is pending.” Cal. Civ. Code § 2923.6(c). The Complaint does not allege “an
20 action for injunctive relief to enjoin a material violation of Section ... 2923.6....” Cal.
21 Civ. Code § 2924.12(a)(1). The Court finds that Plaintiff has failed to show a likelihood
22 of success on the merits.

23 **III. Conclusion**

24 IT IS HEREBY ORDERED that the July 19, 2013 Application for Temporary
25 Restraining Order is DENIED. (ECF No. 10).

26 DATED: July 22, 2013

27 
28 **WILLIAM Q. HAYES**
United States District Judge